

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 8, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Ed Dawson, Bailie Homes, BA06:010, petitioner
Brett Meili, BA06:010, neighbor
Tamara Marek, BA06:011, petitioner
Attorney Richard E. Reilly, Gimbel Reilly Guerin Brown,
BA06:011, representing the petitioner
Robert Treutelaar, BA06:011, builder
Matthew Lund, BA06:012, petitioner
Michael Kline, BA06:012, father-in-law of the petitioner and
owner of the adjacent lot
John Conway, BA06:012, neighbor
Ted and Marcia Hansen, BA06:012
Mr. and Mrs. Arthur Dietrich, BA06:013, owners
Jeff Jensen, Design Build Associates, LLC, BA06:013,
petitioner/builder
Mark Stanle, BA06:013, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of February 22, 2006.*

The motion was seconded by Mr. Dwyer and carried unanimously.

NEW BUSINESS:

BA06:010 BAILIE HOMES

Mr. Dwyer *I move to adopt the staff's recommendation, which was to deny the request for variances to construct a new residence and attached*

garage, as proposed, but to approve variances from the road setback, offset, shore setback, floodplain setback, floor area ratio, and open space requirements, to permit the existing single-family residence to be razed and replaced with a new single-family residence and attached garage, subject to the conditions recommended in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial of the request for variances to construct a new residence and attached garage, as proposed, but approval of the request for variances from the road setback, offset, shore setback, floodplain setback, floor area ratio, and open space requirements of the Ordinance, subject to the following conditions:

1. The total floor area of the new residence and attached garage, including the first floor and the second floor (if any) of the residence and the attached garage, but not any finished living area in the exposed basement, shall not exceed 1,680 sq. ft. The residence must have an attached, side-entry garage of at least 400 sq. ft. The first floor of the residence does not need to conform with the minimum required first floor area of 850 sq. ft., but the residence must have at least 1,100 sq. ft. of finished living area. If necessary, finished living area in the exposed basement may be included as floor area for the purpose of meeting the 1,100 sq. ft. minimum, but any finished living area in the exposed basement shall not be included in the floor area ratio calculation. This will result in a maximum floor area ratio of approximately 30%.
2. The residence shall be no more than three stories, as viewed from the lake, and it must conform with the height requirements of the Ordinance.
3. The new residence and attached garage must be at least 5 ft. from the edge of the 20 ft. wide platted road right-of-way of Road B and at least 5 ft. from the north lot line, as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width. All appurtenances such as decks or patios must also be at least 5 ft. from the edge of the 20 ft. wide platted road right-of-way of Road B and at least 5 ft. from the north lot line. This will place the building and any appurtenances outside of the 30 ft. wide established road right-of-way.
4. There shall be no sidewalks, walkways, or stairs between the north wall of the residence and the side lot line.
5. The new residence and attached garage must be at least 5 ft. from 100-year flood elevation line, as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width.
6. Any ground-level patios or decks must be located outside of the 100-year floodplain and any elevated decks shall not be permitted to extend lakeward of the 100-year flood elevation line.
7. **The placement of fill within the 100-year floodplain will not be permitted.**

8. The new residence and any proposed stairs, sidewalks, or walkways shall be designed to conform with the existing topography. **New retaining walls will not be permitted, unless the Planning and Zoning Division staff determines that they are necessary for erosion and sediment control.**
9. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the new residence and attached garage, as well as any proposed decks, patios, sidewalks, walkways, or stairs, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties or the road, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 10.
12. Prior to the issuance of a Zoning Permit, at least two of the four piers must be removed.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Due to the size and configuration of the lot, it is impossible to replace the existing deteriorated residence without multiple variances. However, variances should be granted only to provide the minimum relief necessary for reasonable use of the property.

The variances necessary to permit the proposed new residence and attached garage go beyond the minimum relief necessary for reasonable use of the property. The proposed residence and attached garage have a total floor area of 3,204 sq. ft., which far exceeds the minimum required house size of 1,100 sq. ft. Given the extremely small lot, such a large residence would adversely affect the water quality of the lake and would be contrary to the public interest. Further, the proposed residence and attached garage would be located within both the 100-year floodplain

and the established road right-of-way. Allowing the residence to be located within the established road right-of-way would require Town Board approval and the recordation of a Declaration of Restrictions indicating that the residence is partially within the established road right-of-way and if, in the future, any portion of the residence should interfere with necessary road improvements, that portion of the residence must be removed at the owner's expense. Although Road B is a minor dead-end road, this property is at the very beginning of the road and all other residents of Road B must drive past it to reach their homes. Therefore, it is felt that, at a minimum, the new residence should be located outside of the established road right-of-way.

The approval of variances from the road setback, offset, shore and floodplain setback, floor area ratio and open space requirements of the Ordinance, as recommended, will allow replacement of the deteriorated residence with a new residence that has a similar footprint as the existing residence, except for the addition of a two-car attached garage. This will not adversely affect neighboring property owners or the lake and is not contrary to the public interest. The approval of variances, as recommended, will result in the construction of a new residence that is appropriately sized for the lot and located in as conforming a location as possible, which is in conformance with the purpose and intent of the Ordinance.

BA06:011 TAMARA MAREK

Mr. Bartholomew

I make a motion to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The re-configured deck must be constructed as shown on the plans submitted with the variance application.
2. The re-configuration of the deck shall not result in any changes to the existing grades around the residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Since the cumulative 50% limit has already been exceeded by the previous remodeling, denial of a variance to remodel a non-conforming structure in excess of 50% of its fair market value would be unnecessarily burdensome because it would prevent any re-configuration of the awkwardly designed deck. The proposed changes to the deck will not adversely affect the adjacent property or increase the degree of non-conformity because the re-configured deck will not extend any

closer to the 100-year floodplain and wetland/conservancy area than the existing deck. Therefore, the approval of this request is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA06:012 MATTHEW LUND

Mr. Bartholomew *I make a motion to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following condition:

A Certified Survey Map, showing the re-configured lot owned by the petitioner and the re-configured adjacent vacant lot to the east, must be prepared by a registered land surveyor, approved by the Town of Oconomowoc and the Waukesha County Department of Parks and Land Use, and recorded in the Waukesha County Register of Deeds office, prior to the issuance of a Zoning Permit for the construction of a residence on the re-configured vacant lot to the east.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variance would be unnecessarily burdensome because it would prevent a proposed lot line adjustment that will improve the awkward lot configuration of the subject property, while also providing a conforming building envelope on the adjacent lot. The subject property has a depth to width ratio of more than 10 to 1 and even after the proposed lot line adjustment, it will have a lot area of more than twice the minimum required lot area in the R-3 Residential District. The proposed lot line adjustment will improve the depth to width ratio of the subject property, while not creating any additional parcels. The approval of this request will not adversely affect the adjacent properties or the floodplain and is not contrary to the public interest. Therefore, the approval of this request, with the recommended condition, is in conformance with the purpose and intent of the Ordinance.

BA06:013 ARTHUR DIETRICH - Owner
Design Build Associates LLC - Petitioner

Mr. Schultz *I make a motion to approve the request, as submitted, for variances to permit the proposed repair of the back wall of the residence and the installation of a deck on the first floor with a door leading out to it that will allow for egress in conformance with the uniform dwelling code for the reasons that the cost of the proposed repair of the wall*

and the construction of the deck probably will be less than 50% of the fair market value of the residence and what is causing the cost to exceed the 50% limit is the repair of the lawn and sidewalk and the new gravel backfill and draitile that would go behind the wall and therefore, the cost of the actual repairs to the house may actually be under the 50% limit.

The motion was seconded by Mr. Dwyer. Following a discussion, Mr. Schultz amended his motion, as follows:

Mr. Schultz

I amend my motion to specify that the approval includes the requested shore and floodplain setback variances for the proposed conversion of the porch roof to a walk-out deck, with the condition that the deck may not extend beyond the existing footprint of the porch roof, and to include additional reasons for the approval of the variances, as stated by Mr. Tarmann. The additional reasons for the approval are as follows:

Allowing the proposed repair of the structurally failing wall will require only a minimal amount of variance relief, if any, from the 50% provision of the Ordinance and will allow a reasonable use of the property while not compromising the purpose and intent of the Ordinance. The granting of the 50% fair market value variance relating to the wall repair will not adversely affect the general public's interest or welfare and will not be detrimental to nearby properties. Further the approval of this request will result in safe occupancy for the owners and their guests while they are residing in the structure.

The amended motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is not unnecessarily burdensome not to have the proposed walk-out upper-level deck on the lake side of the residence, since there is an existing door from that upper level on the road side of the residence. In addition, there is an existing ground-level covered porch on the lake side of the residence and a concrete patio on the west side of the residence.

Granting a variance to allow the cost of repairing and remodeling the residence to exceed 50% of its fair market value will prolong the life of an extremely non-conforming structure, which is not

in conformance with the purpose and intent of the Ordinance and is contrary to the public interest. If the foundation cannot be repaired for less than 50% of the fair market value of the residence, the owner is encouraged to re-apply for the necessary variances to permit him to replace the existing residence with a more conforming residence, located farther from the lake and from the side lot line.

ADJOURNMENT:

Mr. Dwyer *I move to adjourn this meeting at 8:35 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment